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PUBLIC UTILITIES

Summary of Public Comments and Agency Responses

General Comments

CHAPTER 4 ENERGY COMPETITION STANDARDS

N.J.A.C. 14:4-1.2 DEFINITIONS

SUBCHAPTER 5 ENERGY LICENSING AND REGISTRATION

N.J.A.C. 14:4-5.1 SCOPE; GENERAL PROVISIONS

N.J.A.C. 14:4-5.2 BASIC REQUIREMENTS FOR AN ELECTRIC POWER SUPPLIER, GAS SUPPLIER OR CLEAN POWER MARKETER LICENSE

N.J.A.C. 14:4-5.3 APPLICATION CONTENTS – INITIAL ELECTRIC POWER SUPPLIER, GAS SUPPLIER OR CLEAN POWER MARKETER LICENSE

N.J.A.C. 14:4-5.4 BOARD REVIEW PROCEDURE FOR AN APPLICATION FOR AN ELECTRIC POWER SUPPLIER, GAS SUPPLIER OR CLEAN POWER MARKETER INITIAL LICENSE OR RENEWAL

N.J.A.C. 14:4-5.5 REQUIREMENT THAT APPLY AFTER A LICENSE IS ISSUED

N.J.A.C. 14:4-5.6 TERM AND EXPIRATION OF AN ELECTRIC POWER SUPPLIER, GAS SUPPLIER OR CLEAN POWER MAKETER LICENSE

N.J.A.C. 14:4-5.7 REQUIRED CONTENTS OF AN APPLICATION FOR RENEWAL OF AN ELECTRIC POWER SUPPLIER, GAS SUPPLIER OR CLEAN POWER MARKETER LICENSE

N.J.A.C. 14:4-5.8 REGISTRATION PROCEDURE – ENERGY AGENT OR PRIVATE AGGREGATOR

N.J.A.C. 14:4-5.9 REGISTRATION RENEWAL – ENERGY AGENT OR PRIVATE AGGREGATOR

N.J.A.C. 14:4-5.10 LDC RESPONSIBILITIES

N.J.A.C. 14:4-5.11 REGISTRATION PROCEDURE – ENERGY CONSULTANT

N.J.A.C. 14:4-5.12 FEES

N.J.A.C. 14:4-5.13 ENFORCEMENT

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Energy Competition Standards

Licensing and Registration

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments

Proposed Changes: N.J.A.C. 14:4-1.2 and 5

Proposed February 3, 2020, at 52 N.J.R. 130(a)

Authorized by: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President; Mary-Anna Holden, Dianne Solomon, Upendra Chivukula and Bob Gordon, Commissioners.

Authority: N.J.S.A. 48:2-2-1 et seq.

BPU Docket Number: AX19091003

Submit Written Comments by _____ to:

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: AX19091003
44 S. Clinton Ave.
PO Box 350
Trenton, NJ 08625-0350

Take Notice that the Board of Public Utilities (“BPU” or “Board”) proposed amendments to N.J.A.C. 14:4-1.2 and 5 on February 3, 2020 at 52 N.J.R. 130(a). The proposed amendments generally concern energy competition, primarily to subchapter 5, N.J.A.C. 14:4-5 et seq., Energy Licensing and Registration. As of July 9, 2019, pursuant to N.J.S.A. 48:3-78 and -79 third-party electric power and natural gas supplier licenses issued by the Board may be renewed without expiring if certain conditions are met.

The purpose of the proposed rule amendments published at 52 N.J.R. 130(a) is to conform the regulations to the new law. The Board’s amendments provide that a license shall not expire so long as the licensee pays to the Board a license renewal fee accompanied by a timely and complete annual information update on a form prescribed by the Board. The renewal fee and annual information update form must be submitted within 30 days prior to the anniversary date of the last approved licensing application. In addition, the amendments are also applied to registrants for consistency. The amendments include other updates to reflect current Board policies.

The BPU is proposing substantial changes to the amendments in response to comments received. A summary of the comments which prompted changes, and the agency response to those, is provided below. This notice of proposed substantial changes is published pursuant to N.J.S.A. 52:14B-4.10.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Steve Goldenberg & Paul Forshay on behalf of New Jersey Large Energy Users Coalition (NJLEUC);
2. Murray Bevan on behalf of Retail Energy Supply Association (RESA); and
3. Maura Caroselli on behalf of New Jersey Division of Rate Counsel (RC).

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

N.J.A.C. 14:4-1.2

1. COMMENT: The amended rule contains proposed definitions for a “self-supply load serving entity end-user customer” and a “self-supply gas end-user customer”. NJLEUC does not take issue with these definitions, as they are consistent with the definitions proposed in our prior comments and with the business practices of our members. (NJLEUC)

RESPONSE: Although, the Board appreciates this comment in support of the proposed definitions, the Board finds that further internal and stakeholder discussions are necessary based upon the other comments received on the proposal and is thus deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end user customer, including the proposed definitions, from the proposed rules.

2. COMMENT: Upon review of this proposed rule, RESA is concerned that the qualification thresholds of 5,000 therms for “Self-supply gas end-user customer” and 50 kilowatts for “Self-supply load serving entity end-user customer” is far too low as these are the definitions for small commercial customers rather than “large volume end-users.” In addition, the proposed rules seem to allow self-suppliers to aggregate multiple loads across the state. Such a low threshold, combined with the ability to aggregate load, may undermine important consumer protections and convert self-suppliers into proxy TPSs. (RESA)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary and is thus deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end user customer from the proposed rules.

3. COMMENT: Rate Counsel contends that the language in these definitions and in section N.J.A.C. 14:4-5.1(c) is unclear as it could leave self-supply end users vulnerable to additional Board requirements such as the state’s Renewable Portfolio Standards (RPS). Leaving self-supply end-users in the state vulnerable to obligations under the RPS would essentially create a cost-prohibitive tax on many small and

large businesses who have made the business decision to become self-supply end-users. The RPS obligations are currently not applicable to these entities. Instituting an RPS obligation, which could equate to upwards of hundreds of thousands of dollars on these businesses could encourage them to pass on the cost to their customers or make them unable to compete against other businesses in the state or, worse, it could prevent them from operating in the state at all. Rate Counsel recommends adding language that specifically excludes self-supply end users from the definition by stating that “a self-supply LSE is not an electric power supplier” and “a self-supply LSE is not a gas supplier.” This would make clear the Board’s intent with regard to self-supply end users. (RC)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary and is thus deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end user customer from the proposed rules.

4. COMMENT: The proposed rule could have the effect of exempting a significant portion of New Jersey load from the state’s renewable portfolio standard (“RPS”) because, as explained in the previous comments by the New Jersey Large Energy User’s Coalition, the enabling statute for the RPS contains multiple provisions that impose the RPS obligation only on sales by electric power suppliers and basic generation service providers “that provide electricity to customers within the state”. See N.J.S.A. 48:3-87(c)(2). A self-supplier would not be an electric power supplier or basic generation service provider, and it would not provide electricity to multiple customers within the state. The Board, which is a creature of statute, cannot by rule require self-suppliers to adhere to the RPS if the enabling statute for the RPS does not apply to self-supply entities. Ultimately, RESA believes that the exemption for self-suppliers should only apply to industrial volume end users at a single site or campus. (RESA)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary and is thus deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end user customer from the proposed rules.

At newly proposed N.J.A.C. 14:4-5.1(c)

5. COMMENT: A literal reading of the proposed amendments also clarifies that self-supply end-user customers cannot be deemed electric power suppliers or gas suppliers (or private aggregators) as defined by EDECA and the LR Rules for the simple reason that self-supply end-user customers are prohibited from making retail sales to third-party customers, the key element that defines and distinguishes competitive suppliers. It should therefore follow that self-supply end-user customers are not subject to electric power supplier and gas supplier-related obligations — including compliance with the many consumer protection, environmental compliance and reporting requirements contained in the Title 14 Energy Competition Rules —

which cannot apply to self-supply end-user customers prohibited from making retail sales. However, viewed another way, the same section of the proposed rule could be read to impose additional, potentially significant obligations on self-supply end-user customers — obligations that have never before applied to them. Thus, the section further states that “the self-supply LSE or self-supply gas end-user customer is not excused from complying with applicable Board requirements and rules for suppliers including, but not limited to, heating value, gas purity, and other supply requirements, as well as applicable clean energy supplier requirements or local electric distribution, or local gas distribution requirements.” No explanation is provided regarding which Board requirements and supplier rules would be “applicable” to self-supply end-user customers, or what is meant or encompassed by the “applicable clean energy supplier requirements.” (NJLEUC)

The potential costs associated with the RPS obligation would be prohibitive and harmful to businesses. It is necessary to put into perspective the potential costs that would be associated with the imposition of RPS obligations on self-supply end-use customers. The members of NJLEUC in this category have advised that their average annual exposure would be \$600,000 each. This would place a tremendous burden on these businesses, particularly in this rapidly deteriorating, COVID-19 economic environment, which will pose significant additional challenges to the State’s already struggling businesses. The fate of these companies should concern the State and give the Board pause before imposing such a substantial financial obligation. (NJLEUC)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary and is thus deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end user customer from the proposed rules.

6. COMMENT: In light of the foregoing analysis, NJLEUC again urges the Board to add the following definition of a Self-Supply LSE Customer to N.J.A.C. 14:4-1.2 to clarify which of the various provisions of the LR Rules apply to the different categories of entities that are now broadly categorized as load serving entities:

“Self-Supply LSE Customer” means a large volume commercial or industrial business entity that is licensed by the Federal Energy Regulatory Commission as a load serving entity, a member of PJM for the purpose of purchasing electric energy and capacity [and/or natural gas] in the wholesale markets solely for the customer’s own consumption and does not provide electric generation service [and/or gas supply service] for use by third-party retail customers.

References to “Self-Supply LSE Customer” could then be inserted into any section of the LR Rules that is deemed to be applicable to these customers. Similarly, the definitions of “Electric Power Supplier” and “Gas Supplier”, as currently set forth in N.J.A.C. 14:4-1.2, should be amended to exclude Self-Supply LSE Customers in a manner similar to the treatment afforded to utilities that provide basic generation service or gas distribution service. We suggest that the following language should be added to the end of the existing definitions:

“A Self-Supply LSE Customer is not an electric power supplier” (or, alternatively, “A Self-Supply LSE Customer is not a gas supplier”).

The inclusion of these definitions in this manner would effectively eliminate the ambiguities in the LR Rules, current and proposed, regarding their applicability to LSEs that are not engaged in retail sales of electric generation service or gas supply service and, therefore, are not the intended focus of the rules. (NJLEUC)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary and is thus deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end user customer from the proposed rules.

At newly proposed N.J.A.C. 14:4-5.1(l)

7. COMMENT: Confidentiality designations for a third-party supplier’s customer count and market share are not appropriate since this information may be useful to ratepayers who are shopping for a third-party supplier. The customer count is particularly useful since it demonstrates how many customers have already signed with the company. The number of customers served by utilities is not confidential. Customers have a right to be able to obtain basic information about the supplier which may serve them, including the number of customers it presently serves. The number and nature of customer complaints received each year for each third-party supplier should be published on the NJ Power Switch website to allow ratepayers to make more educated decisions when choosing a supplier. (RC)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary to address the section regarding which items to treat as confidential. Therefore, the Board is deleting the changes in this section of the proposed rules with regard to customer count and market share.

8. COMMENT: RESA strongly supports Staff’s proposal to designate TPS customer counts, market share, and financials (unless already publicly available) as confidential information. As explained in RESA’s prior comments, it is essential for this information to receive confidential treatment to protect the privacy of TPS customers as well as the business interests of suppliers. Even when such information is aggregated, customer specific information can be discerned if the aggregated data is not sufficiently diverse. (RESA)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary to address the section regarding items to treat as confidential. Therefore, the Board is deleting the changes in this section of the proposed rules with regard to customer count, and market share.

9. COMMENT: While not necessarily part of this rulemaking, RESA proposes that the Board provide a model confidentiality agreement as part of its Initial Application and Annual Information Update Form to facilitate and standardize the process of

designating information as confidential. RESA has again attached a model confidentiality request and affidavit for this purpose. (RESA)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary on the section regarding items to treat as confidential which may also include a discussion of RESA's suggestions regarding the model for confidentiality and affidavit.

10. COMMENT: In addition, RESA suggests that the Board provide, either in its proposed rule or on its forms, that an applicant providing publicly available financial information such as a 10K or 10Q may provide a link to such information rather than providing a printed copy with the Initial Application and Annual Information Update. (RESA)

RESPONSE: The Board is working on accepting applications electronically and the ability to segregate confidential information from information that is public. This will give Staff access to required applicant information on its secure system, while allowing applicants to avoid providing a hard copy of cumbersome and voluminous documents. The Board believes that an electronic filing would address RESA's concerns about the inefficiency of paper filing, although the Board does not have a date certain on implementation of that goal. However, the Board does not intend to utilize TPS links to financial information in the Board's system,

At newly proposed N.J.A.C. 14:4-5.2(c)2

11. COMMENT: The proposed rule does not specify the time period for the projection of gas and electric energy prices or provide any methodology or assumptions that should be used in formulating the projection—such information (for example, natural gas forward price curves) is very clearly sensitive, competitive information. Providing customers with “projected price comparison information” would not help customers make informed choices unless the methodology for determining the projected price comparison is standardized throughout New Jersey's retail market. RESA also notes that the EDC's price to compare is not a projected price. Therefore, when a shopping customer compares the EDC's BGS price with a TPS price offer, the customer is comparing apples with oranges. The proposed rule change doesn't assist customers who are attempting to compare EDC pricing with TPS pricing. Importantly, RESA members are not aware of a single state that requires suppliers to make “projected price comparison information” publicly available. The states that do require some sort of price transparency either require a historical price averaged over a set period or they require a generally available price while allowing suppliers to make other offers that depart from the generally available price. Either of these options would be far preferable to the proposed requirement for “projected price comparison information”. The Board must also understand that requiring “projected price comparison information” would not mean that such a price is actually available because market fundamentals may depart sharply from the

supplier's projected price. Most suppliers' price offers are made subject to availability and are subject to change prior to acceptance. (RESA)

RESPONSE: The Board does not agree with the comments. The purposes of the rule change are to make sure that the price link information is readily available to residential and small customers without them having to provide personal information and to adhere to the existing language in the statute with regard to projected pricing.

N.J.A.C. 14:4-5.7(d) and (f)-(h)

12. COMMENT: RESA strongly opposes the proposed rule requiring suppliers to provide a copy of their Annual Information Update to all LDCs within whose territory they provide service. Much of the information contained in the update is confidential. A supplier should not be required to provide detailed information about its business, especially confidential information, to their competitors. Moreover, the proposed requirement is overly burdensome on suppliers and on the LDCs. To the best of our knowledge this is not information the LDCs have requested, provides no clear benefit to the LDCs and would require them to manage and maintain an unnecessary influx of TPS applications. At most, suppliers should be required to confirm that their licenses have been renewed. (RESA)

RESPONSE: The Board finds merit in the comments. It was the intent of the rule proposal to have the licensee send a copy of the notice from the Board in receipt of the Annual Information Update Forms. Respective amendments to the language in the proposed rules have been made. The amended language requires a licensee to provide a copy of the Board's receipt of the annual information update form.

N.J.A.C. 14:4-5.11(d)-(e)

13. COMMENT: Specifically, bills S. 604 and S. 605 (2018) (P.L. 2019, c. 100 and 101) (the "Acts") each have identical language providing that a license shall not expire, so long as the licensee pays, to the Board, a license renewal fee accompanied by a timely and complete annual information update on a form prescribed by the Board. The renewal fee and annual information update form must be submitted "within 30 days before the anniversary date of the last approved licensing application". N.J.S.A. 48:3-78(b)(2) for electric power supplier license; N.J.S.A. 48:3-79(b)(2) for gas supplier license (emphasis added). The Board's notice of proposed rules acknowledges this language in the Summary. The actual proposed rules; however, contain conflicting timing requirements throughout—that is, they call for the Annual Information Update Form to be submitted both "within 30 days before the anniversary date" and "at least 30 days before the anniversary date". Moreover, in numerous places, the rules refer to a "30-day deadline", implying that the Annual Information Update Form must be submitted at least 30 days before the anniversary date, which is inconsistent with the underlying statute. (RESA)

RESPONSE: The Board finds merit in the comments submitted by RESA. The Annual Information Update Form is to be filed "within 30 days before the anniversary date of the last approved licensing application". Respective amendments to the

language in the proposed rules have been made. The proposal has been amended to reflect the language “within 30 days before the anniversary date of the last approved licensing application.”

Summary of Agency-Initiated Changes:

The Board has deleted the added definitions for “self-supply load serving entity end-user customer” and a “self-supply gas end-user customer.” The Board also deleted the amendments that referred to these added definitions. The comments explained how these added definitions could substantially and unintentionally change the obligations for self-supply entities. The Board will engage with stakeholders further and may revisit the issue in the future.

The Board is deleting the amendments that designated customer counts, market share, and financials (unless already publicly available) as confidential information. Stakeholders presented contrasting viewpoints that the Board will consider moving forward, and the Board may revisit the matter in the future.

The Board also includes with this notice minor changes to correct drafting errors and clarify ambiguities.

Effect of Proposed Changes on Impact Statements Included in Original Proposal

The changes to the proposed amendments will not affect the impact statements included in the original rule proposal. In fact, deleting the self-supply definitions will ensure that there are no unintended economic impacts from the proposed amendments. The changes also delete the designations of customer counts, market share, and financials (unless already publicly available) as confidential information. These changes do not affect the Social, Economic, Jobs, or Agriculture Industry Impacts; the Federal Standards Statement; the Regulatory Flexibility Statement; or the Housing Affordability or Smart Growth Development Impact Analyses as published in the original proposal.

Full text of the proposed substantial changes to the proposed amendments follows (additions to proposal indicated in italicized boldface *thus*; deletions from proposal indicated in italicized cursive brackets *[thus]*):

CHAPTER 4
ENERGY COMPETITION

SUBCHAPTER 1 – GENERAL PROVISIONS AND DEFINITIONS

14:4-1.2 Definitions

The following words and terms, when used in this chapter or in N.J.A.C. 14:8, Renewable Energy and Energy Efficiency, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1.

...

["Clean power marketer" or "CPM" means a person who participates in the Board's clean power choice program by purchasing and retiring Renewable Energy Certificates (RECs) on behalf of a subscribing customer for an agreed-upon price that is added onto the customer's utility bill.]

...

["Self-supply gas end user customer" is a commercial or large volume gas customer in New Jersey with a cumulative peak load greater than 5,000 therms. The Self-supply gas end user customer shall:

- 1. Arrange for and directly manage its own purchase of gas supply service and delivery of such supplies through use of the intrastate transmission capacity services to the city gate in the wholesale market;*
- 2. Arrange for and manage delivery of the gas supply services through use of the local distribution company's distribution system to the Self-supply gas end user customer's*

facility and solely for the Self-supply end user customer's own consumption at that facility; and

- 3. Not purchase and sell gas supply service and/or arrange for or manage the delivery of gas supply service for sale to an end user, retail customer, or to a third-party supplier in New Jersey.*

“Self-supply load serving entity end user customer” or “Self-supply LSE” means a commercial or large volume retail electric end user customer in New Jersey with a cumulative peak load of greater than 50 kilowatts. The Self-supply LSE shall:

- 1. Be licensed by PJM and the Federal Energy Regulatory Commission as a load serving entity;*
- 2. Be a member of PJM for the purpose of purchasing electric energy and capacity;*
- 3. Arrange for and directly manage its own purchase of supplies of electric power and energy and use of transmission and ancillary services in the wholesale market;*
- 4. Arrange for and manage delivery of the electric generation service and energy over the transmission system, and local distribution companies distribution system to the Self-supply LSE's facilities solely for the Self-supply LSE's own consumption at those facilities; and*
- 5. Not purchase and sell electric generation service and/or arrange for or manage the delivery of electric generation service for sale to an end user, retail customer, or to a third-party supplier in New Jersey.]*

...

SUBCHAPTER 5 - ENERGY LICENSING AND REGISTRATION

14:4-5.1. Scope; general provisions

(a) This subchapter shall apply to the following, as these terms are defined at N.J.A.C. 14:4-1.2:

1. -3. (No change.)

4. Private aggregators; **and**

[5. Clean power marketers; and]

[6.] **5.** Local distribution companies (**LDCs**).

(b) A BGS provider is not subject to this subchapter, [as] **in** regard[s] **to** those activities related to providing BGS services.

[(c) A Self-supply load serving entity end user customer (Self-supply LSE) and/or Self-supply gas end user customer may request a one-time waiver of the license filing requirement from the Board. Copies of the waiver request and all supporting documentation shall be provided to the local distribution company and the Division of Rate Counsel. The application and supporting documentation must demonstrate compliance with the definition of Self-supply LSE or Self-supply gas end user customer. The Self-supply LSE or Self-supply gas end user customer is not excused from complying with applicable Board requirements and rules for suppliers including but not limited to heating value, gas purity and other supply quality requirements as well as applicable clean energy supplier requirements or local electric distribution or local gas distribution requirements. An entity whose waiver is granted shall not be required to file for an electric power supplier license and/or gas supplier license or to renew an existing electric power supplier license or gas supplier license. A Self-supply LSE and Self-supply gas end user customer shall provide notification within 10 days of any change in the customer's status that would affect the customer's classification as a Self-supply LSE or Self-

supply gas end user customer to the Board, the local distribution company, and Division of Rate Counsel. In such circumstances, the Board may revoke the customer's status as a Self-supply LSE and Self-supply gas end user customer and require either a new waiver be filed with the Board to reinstate the customer's status as a Self-supply LSE or Self-supply gas end user customer; or an initial application be filed with the Board to become a third-party supplier, whichever may be applicable based upon the changes in the customer's status.]

[(c)] [(d)] (c) (No change in text.)

[(d)] [(e)] (d) A person shall not do, or offer to do, any of the following, without first obtaining an electric power supplier license[,] **or** a gas supplier license [or a clean power marketer license], as applicable, under this subchapter:

1. -.2. (No change.)
3. Enroll customers for, or arrange for, the provision of electric generation service or gas supply service for use by retail customers; **or**
4. Contract for, or otherwise assume legal responsibility to provide, electric generation service or gas supply service for use by retail customers.[]; or]
- [5. Participate in the Board's Clean Power Choice program, as set forth in *In The Matter Of A Voluntary Green Power Choice Program*, BPU Docket No. E005010001, dated January 24, 2005.]

[Recodify existing] (e)-(g) [as (f)-(h)] (No change in text.)

[(h)] [(i)] (h) To obtain an electric power supplier[,] **or** gas supplier [or clean power marketer] license, or **obtain** [to register as] an energy agent (including an energy consultant) or private aggregator **registration**, a person shall:

1. Submit a completed application that meets the requirements at N.J.A.C. 14:4-5.3, [or

5.6] **5.8, or 5.11**, as applicable;

2. (No change.)

3. If the application is for an electric power supplier, [or] gas supplier license, **or energy consultant registration**, provide a surety bond that meets the requirements at N.J.A.C.

14:4-5.4 **and 5.11, as applicable.**

[(i)] **[(j)] (i)** (No change.)

[(j)] **[(k)] (j)** Applications, forms, and information relating to this subchapter may be obtained at:

New Jersey Board of Public Utilities

ATTN: Division of Audits/Licensing

44 South Clinton Avenue, 9th Floor

PO Box 350

Trenton, New Jersey 08625-0350

www.nj.gov/bpu/ or

<https://nj.gov/bpu/about/divisions/energy/thirdparty.html>

See BPU website for further contact information regarding licensing.

[609 292 1681]

[(k)] **[(l)] (k)** All information provided to BPU as part of the process of obtaining or [renewing] **updating** an electric power supplier[,], **or** gas supplier [or clean power marketer] license, or obtaining [registration as] **or updating** an energy agent (including an energy consultant) or private aggregator **registration**, shall be deemed public information, except for the following:

1. (No charge.)

2. Information for which a confidentiality claim has been filed under the Board's OPRA rules, which has been determined to be confidential; [and]

3. Sales volumes and revenues sorted by customer class[.]; *and*

[4. Customer count;

5. Market Share; and]

[6] 4. Financial Statements, unless already publicly available Federally, in New Jersey, or in other states or jurisdictions.

[Recodify existing] (l)-(m) [as (m)-(n)] (No change in text.)

14:4-5.2 Basic requirements for an electric power supplier[,] **or** gas supplier [or clean power marketer] license

(a) An electric power supplier[,] **or** gas supplier license [or clean power marketer] shall be issued only if an applicant meets the applicable requirements in this section, in addition to all other applicable requirements in this subchapter.

(b) To be eligible for an electric power supplier[,] **or** gas supplier [or clean power marketer] license, an applicant shall maintain [an] **a physical** office in New Jersey for the purposes of accepting service of process, maintaining the records required under this subchapter and ensuring the licensee's accessibility to State agencies, consumers and gas and electric public utilities. To satisfy this requirement, an applicant shall:

1. (No change.)

2. Provide the street address of the **physical** New Jersey office. A post office box, [or] rented mail-receiving space at a mail service store, **virtual office, or the New Jersey registered agent address** shall not constitute a **physical** New Jersey office **for the electric power supplier or gas supplier.**

(c) The applicant shall document that it will make itself accessible to customers and regulators

by maintaining the following:

1. (No change.)
2. **A page on the supplier's Internet website that shall include projected price comparison information that will enable residential customers and commercial electric customers with a cumulative peak load of 50 kilowatts or less, and/or commercial gas customers with a cumulative peak load of 5,000 therms or less to make informed choices regarding the purchase of electric generation service or gas supply service from that supplier. This website page shall contain current and accurate pricing information, and shall be maintained and updated by the supplier regularly. Customers shall have access to the posted information without being required to provide personal customer information other than the following: zip code, distribution company, type of service (electric or gas), and customer class (residential or small commercial). The direct Internet pricing link to the supplier's website page with the posted information shall be provided to the Board with the initial application, Annual Information Update Form and within 10 days of the effective date of changes to the Internet link;**

[2.] 3. (No change in text.)

[3.] 4. A regulatory affairs representative, who is available by telephone during normal New Jersey business hours, and who will do the following:

- i. Assist Board staff in pursuing investigations on behalf of the Board and/or the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety; [and]
- ii. Facilitate the resolution of billing complaints and other problems[.];

- iii. **Assist Board staff in obtaining additional information necessary to process applications and/or Annual Information Update Forms; and**
- iv. **Assist Board staff in answering questions regarding licensing information and to address other regulatory issues that may arise.**

(d) An automated telephone service shall not, by itself, satisfy the requirements in [(c)2 and 3] **(c)3 and 4** above. Rather, the applicant shall make it possible for customers, Board staff and/or Division of Consumer Affairs staff, to speak to an individual. It is not necessary that these representatives be located in New Jersey. However, a representative shall be available to Board staff and/or customers within 24 hours, if necessary to resolve a problem.

(e)-(g) (No Change.)

14:4-5.3 Application contents – initial electric power supplier[,] **or** gas supplier [or clean power marketer] license

(a) An application for an electric power supplier[,] **or** gas supplier [or clean power marketer] license shall include all of the information required by the instructions accompanying the application form for the appropriate license. The application form and instructions **along with BPU contact information** shall be available from the BPU through its website at www.nj.gov/bpu/. [or by telephone at (973) 648 4450]

(b) A complete application for an electric power supplier[,] **or** gas supplier [or clean power marketer] license will require an application form, completed as directed in the instructions that accompany the application form. The application form shall require the following types of information:

1. (No change.)
2. The name of the registered New Jersey [energy] agent that the business will retain, including the agent's **physical** New Jersey office address;
- 3.-5. (No change.)
6. Samples of documents that the applicant will use in the course of business, including a sample residential contract **and material terms and conditions summary page**;
- 7.-12. (No change.)
13. If the application is for an electric power supplier or gas supplier license, a certification, signed by an officer of the corporation, stating that the applicant is in compliance with the retail choice consumer protection rules at N.J.A.C. 14:4-7; [and]
14. A certification, under oath, of truth and accuracy, signed by a corporate officer, partner, sole proprietor, or other appropriate legal representative of the applicant, attesting to the accuracy of the contents of the application, and to the fact that the sample contract and other material submitted as part of the application complies **with all standards and rules applicable to the license and** with this subchapter;[.]
- 15. A certification, under oath, stating that the applicant is in compliance with all Federal Trade Commission (FTC) Telemarketing Sales Rules, including at 16 CFR 310.4; and**
- 16. A certification, under oath, stating that the applicant is in compliance with door-to-door Federal, State, and municipal solicitation standards, rules, and regulations.**

(c) (No change.)

14:4-5.4 Board review procedure for an **initial** application for an electric power supplier **or**[,] gas supplier **and** [or clean power marketer initial license or renewal] **for an Annual**

Information Update Form

- (a) This section sets forth the procedures for acceptance and processing of an initial application **and for an Annual Information Update Form** for an electric power supplier[,] or gas supplier [or clean power marketer] license[and also for renewal of a license].
- (b) Within 60 days after receiving an application for a license or [renewal] **Annual Information Update Form** under this subchapter, Board staff shall notify the applicant if additional information or investigation is needed to determine whether the applicant has met the requirements of this subchapter.
- (c) If Board staff requests additional information under (b) above, the following shall apply:
1. (No change.)
 2. If the additional information is not submitted within this 45-day period, Board staff shall cancel the **initial** application and provide notice of the cancellation to the applicant **or provide notice of potential actions by the Board in the case of Annual Information Update Form**; and
 3. (No change.)
- (d) (No change.)
- (e) Board staff shall notify the applicant when the issuance [or renewal] of a license is approved.
- (f) [Upon receipt of the notice unless issued under (e) above] **Within 60 days of filing an initial application, but no later than two weeks prior to the approval date of the application**, the applicant shall submit a surety bond for the [following] amount[: 1.] **of \$ 250,000** for an electric power supplier license or [a] gas supplier license[; or].
- [2. \$ 25,000 for a clean power marketer license.]
- (g) The surety bond required under this section shall be:

1. (No change.)
2. Posted for a term that will extend for at least as long as the license remains in effect[, including any time during which the license term is extended under N.J.A.C. 14:4-5.6(a)].

(h) (No change.)

[(i) Upon the applicant's posting of the surety bond required under this section, the electric power supplier, gas supplier or clean power marketer license or license renewal, shall be issued.]

(i) Thirty days prior to the expiration of the surety bond, a licensee must file a renewed surety bond for at least the next annual period.

(j) (No change.)

14:4-5.5 Requirements that apply after a license **or registration** is issued

(a) Once licensed, an electric power supplier **or**[, gas supplier [or clean power marketer] shall meet the requirements in this section. Failure to do so shall subject the licensee to penalties and to Board proceedings for revocation[, **or** suspension[, or denial of a license renewal].

(b)-(c) (No change.)

(d) A licensee shall maintain the following records for [at least] **a minimum of** three years, and shall make them available to Board staff within 48 hours after a request. These records shall be maintained in a form that can be inspected by Board staff or transmitted to Board staff within 48 hours after a request:

1. Records, in summary form, of energy contracts or transactions entered into with New Jersey customers, and of services provided by the supplier [or clean power marketer] to New Jersey customers;
2. Copies of all contracts or other writings entered into by the supplier [or marketer],

authorizing the supplier [or clean power marketer] to provide service to one or more New Jersey customers; and

3. (No change.)

(e) (No change.)

(f) A licensee **or energy consultant** shall maintain the surety bond required under N.J.A.C. 14:4-5.4 **and 5.11** throughout the duration of the license **or registration**], including any time during which the license term is extended under N.J.A.C. 14:4-5.6(a)]. The Board may increase the bond amount required if the Board determines that an increase is necessary to protect the interests of the ratepayers of New Jersey. A licensee shall report to Board staff at any time when its sales volume has increased by 33 percent from its previously reported amount, and the Board may increase its surety bond accordingly.

(g) A licensee or registrant shall notify Board staff in writing no later than 10 days after any changes in contact information, including the name of the regulatory contact, the New Jersey mailing address, email and phone numbers of company representatives and regulatory contacts.

[(g)] **(h)** A licensee **or registrant** shall notify Board staff in writing within 30 **calendar** days after any material change in the organizational structure or operation of a licensee's **or registrant's** business **or at the time prescribed in N.J.A.C. 14:4-7.10A whichever is earlier.** If the change affects compliance with this chapter or any other Board rule or order, Board staff shall require the licensee **or registrant** to file an update describing the change, for approval by Board staff.

[(h)] **(i)** If a licensee or registrant reorganizes, restructures, merges with another entity, acquires another company or is acquired by another company, the following requirements shall apply:

1. If the name of the resulting company remains the same, the licensee **or registrant** shall submit a licensing update [at least] **within** 30 calendar days [prior to] **after** the change, including any information about the new entity that is necessary for Board staff to evaluate the entity's compliance with this chapter, including information regarding any changes in the company's services or customer population;
2. If the resulting company does not retain the name of the original licensee **or registrant**, the new entity shall submit an application for a new license **or registration** in accordance with this subchapter [at least]**within** 30 calendar days [before the name change]**after the reorganization, restructuring, merger, or acquisition**, and shall meet all of the requirements that would apply if the entity had never held a license **or registration**, including application fees and, **for licensees and energy consultants**, the issuance of a new surety bond; and
3. [The]A licensee **or registrant** shall continue to serve its existing customers pending the Board's final decision on the license **or registration** update or application, unless otherwise directed by Board staff.

[(i)] **(j)** If a licensee or registrant fails to comply with any applicable requirement in (f), (g), [or] (h), **or (i)** above, the licensee or registrant shall:

1.-3. (No change.)

14:4-5.6 Term and expiration of an electric power supplier[,] **or** gas supplier [or clean power marketer] license

(a) An electric power supplier[,] **or** gas supplier [or clean energy power marketer] license shall **not expire if the licensee complies with N.J.A.C. 14:4-5.2**, [be valid for one year from the date

of issue, except where a licensee] **and** has submitted a complete [renewal application] **Annual Information Update Form** within the 30-day deadline [in] **at** N.J.A.C. 14:4-5.7(a)[, in which case the existing license shall not expire until a decision has been reached upon the renewal application]. **Nothing shall limit the authority of the Board to deny, suspend, or revoke a license at any time, consistent with the provision of P.L.1999, c.23 (N.J.S.A. 48:3-49 et seq.)**

(b) If a license expires **due to non-compliance with this sub-chapter** [without being extended under (a) above], or if a surety bond expires, the contract termination provisions at N.J.A.C. 14:4-7.10(e) shall apply, and the licensee shall:

1.-3. (No change.)

4. Submit a complete **initial** application for a new license [(not a renewal)] within 45 days after license expiration, and/or submit a new surety bond within 45 days after surety bond expiration, as applicable.

(c)-(f) (No change.)

14:4-5.7 Required contents of [an application for renewal] **the Annual Information Update Form** of an electric power supplier[,], **or** gas supplier [or clean power marketer] license

(a) An [application for renewal of an] electric power supplier[,], **or** gas supplier [or clean power marketer license] shall submit a complete [application for renewal] **Annual Information Update Form, as prescribed by the Board and** in accordance with this section, *within [at least]* 30 days before the [expiration] **anniversary date, which is the date** of the [existing license] **last approved licensing application or date assigned by the Board.**

(b) Board staff shall not accept an **Annual Information Update Form** [application for a license

renewal] that is submitted *on and* after the [30-day] *anniversary date* deadline in (a) above. If the [renewal application] **Annual Information Update Form** is incomplete, or is not submitted *by the [within the 30-day]* deadline in (a) above, the initial license shall expire [at the end of its term], and the provisions at N.J.A.C. 14:4-5.6 for expiration of a license shall apply.

(c) In accordance with N.J.A.C. 14:4-5.6(a), if a licensee has submitted a complete **Annual Information Update Form [renewal application]** *by the [within the 30-day]* deadline in (a) above, the [existing] license shall not expire **unless otherwise determined by the Board.**

Nothing shall limit the authority of the Board to deny, suspend, or revoke a license at any time, consistent with the provision of PL. 1999. C.23 (N.J.S.A. 48:3-49 et seq.) [until a decision has been reached upon the renewal application].

(d) An [application] **Annual Information Update Form [for renewal of]** for an electric power supplier[,] **or** gas supplier [or clean power marketer] license shall include the following types of information:

1. Any changes to the information submitted in the licensee's most recent application for an initial license or **Annual Information Update Form [license renewal];**
- 2.-3. (No change.)
4. Information regarding the licensee's sales and revenue, by month and customer class, during the **annual period since the most recent application for an initial license or Annual License Information Update Form [term of the license that is being renewed];**
- 5.-6. (No change.)
7. Any other information necessary to enable Board staff to evaluate the licensee's continued compliance with the license being [renewed,] **updated** [or with this subchapter];

8. If the [application] **Annual Information Update Form** is for an electric power supplier or gas supplier license, a certification, signed by an officer of the corporation, stating that the applicant is in compliance with the retail choice consumer protection rules at N.J.A.C. 14:4-7;
9. (No change.)
10. Documentation that a notice has been sent to all LDCs in whose territory the licensee will do business, stating that the **initial application or Annual Information Update Form** has been submitted to the Board. This documentation may be in the form of a U.S. Postal Service Certified Mail Receipt, a printed copy of an [e-mail] **email** from the LDC stating that it received the notice from the TPS or by other means approved by Board staff in writing prior to sending the notice, which provides equivalent documentation of such notice.
- (e) Bonding requirements for licenses [renewals] shall be commensurate with the amount of business that the licensee has conducted in New Jersey under the expiring license.
- (f) Board staff shall use the procedures at N.J.A.C. 14:4-5.4 to accept and review an [application] **Annual Information Update Form** for [renewal of] an electric power supplier[,]
or gas supplier license [or clean power marketer license].
- (g) Once [a] **an Annual Information Update Form has been filed with the Board** [license has been renewed], the licensee shall, within 10 days after the [renewal is issued] **filing**, provide a copy of the [renewal] **Board receipt of the update** to all LDCs within whose territory the licensee provides service.
- (h) If Board staff discovers after **the filing of** [issuance of a renewal] **the Annual Information Update Form** that any part of the [application] **update** was inaccurate or noncompliant with this

chapter, the Board is not foreclosed from bringing an enforcement action against the licensee for the inaccuracy or noncompliance, including suspension or revocation of the license.

14:4-5.8 Initial r[R]egistration procedure-energy agent or private aggregator

(a)-(f) (No change.)

(g) A registration obtained under this subchapter shall **not expire so long as the registrant pays to the Board, within 30 days before the anniversary date, which is date of the last approved registration application or date assigned by the Board, an annual registration fee, as determined by the Board, accompanied by an annual information update on a form prescribed by the Board** [be valid for one year from the date of issue].

(h)-(i) (No change.)

(j) Once registered, an energy agent, energy consultant, or private aggregator shall meet the requirements set forth under N.J.A.C. 14:4-5.5(g), (h), and (i).

14:4-5.9 Registration [renewal] **annual information update**-energy agent, **energy consultant** or private aggregator

(a) A registered energy agent, [(including a registered)] energy consultant[], or registered private aggregator shall submit an [registration renewal form] **Annual Information Update Form *within [at least]* 30 days before the [expiration] anniversary date of the [existing] last approved registration or date assigned by the Board, accompanied by a registration renewal fee set forth in N.J.A.C. 14:4-5.12.**

(b) If a registrant fails to submit a complete **Annual Information Update Form** [registration renewal form] [*within the 30-day*] **by the** deadline in (a) above, all of the following shall apply:

1. (No change.)
2. Board staff shall not accept a registration [renewal] **Annual Information Update Form**; and
3. The former registrant shall not act as, or represent themselves to others as, an energy agent, **energy consultant**, or private aggregator, as applicable, until the former registrant completes and submits a new registration **application**, accompanied by the fee for an initial registration, which is approved in accordance with this subchapter.

(c) If a registrant has filed a complete [renewal]**Annual Information Update Form accompanied by all appropriate fees** [application] in the time required under (a) above, the applicant's existing registration shall not expire [until the renewal application is acted upon by the Board].

(d) The [registration renewal form] **Annual Information Update Form** shall require updates to the information in the original registration [form] **application or most recent Annual Information Update Form**.

(e) If Board staff [does not notify] **notifies** the registrant that additional information or investigation is needed, [the registration renewal shall be reviewed for approval or denial] **the registrant shall have 45 days to supply any requested information. If the registrant does not submit the requested information within 45 days after the date of the notice issued, the Board may revoke or suspend the registration.**

(f) A registration [renewal] obtained under this subchapter shall [be valid for one year from the date of issue] **not expire so long as the registrant pays to the Board, within 30 days before the anniversary date of the last approved registration application or date assigned by the Board, an annual registration fee, as determined by the Board, accompanied by an annual**

information update on a form prescribed by the Board.

14:4-5.10 LDC responsibilities

(a) (No change.)

(b) Except pursuant to N.J.A.C. 14:4-5.6(b) or (d), an LDC shall not accept, or contract for acceptance of, either of the following from a person unless the person has a valid license issued under this subchapter, including the required surety bond:

1. Electric generation service for use by its retail customers; **or**
2. Gas supply service for use by its retail customers.]; or]
- [3. Clean power service for use by its retail customers.]

(c) An LDC shall not do business with a person performing activities described [in] **at** N.J.A.C. 14:4-[5.1(f) or (g)] **[5.1(g) or(h)] 5.1(f) or (g)**, that is, acting as an energy agent, energy consultant, or aggregator, unless the person has a valid registration under this subchapter.

(d) (No change.)

14:4-5.11 Registration procedure-energy consultant

(a) (No change.)

(b) A registration shall be submitted on forms provided by the Board, available on the Board's website at www.nj.gov/bpu/. The registration form shall require all of the following:

- 1.-2. (No change.)
3. Documentation that the person maintains [an] **a physical** office in New Jersey in accordance with N.J.A.C. 14:4-5.2(b). **A post office box, rented mail-receiving space at a mail service store, virtual office, or a registered agent address shall not constitute**

a physical New Jersey office for energy consultants.

(c) (No change.)

(d) If a registration as an energy consultant is submitted simultaneously with a registration as an energy agent, there shall be no additional application fee for the energy consultant registration.

However, if the registrations are submitted at different times, each registration shall be accompanied by the nonrefundable initial energy agent registration fee set forth at N.J.A.C. 14:4-5.12. This provision shall also apply to **the [registration renewals] Annual Information Update Forms filings.**

(e) An energy consultant registration obtained under this subchapter shall [be valid for one year from the date of issue] **not expire, so long as the registrant pays to the Board, within 30 days before the anniversary date of the last approved registration application or date assigned by the Board, an annual registration fee, as determined by the Board, accompanied by an annual information update on a form prescribed by the Board.**

(f) (No change.)

14:4-5.12 Fees

(a) Fees for license applications and registrations shall include both refundable and nonrefundable components as follows:

	Electric Power Supplier License	[Clean Power Marketer License]	Gas Supplier License	Energy Agent, Private Aggregator, and/or Energy Consultant Registration	[Private Aggregator Registration]
<i>Nonrefundable</i>					
Initial Application Fee [–	\$ 250.00	[\$ 250.00]	\$ 250.00	\$500.00	[\$ 500.00]
<i>Nonrefundable]</i>					

	Electric Power Supplier License	[Clean Power Marketer License]	Gas Supplier License	Energy Agent, Private Aggregator, and/or Energy Consultant Registration	[Private Aggregator Registration]
Initial License Fee – Refunded if license is denied	\$ 1,000.00	[\$ 1,000]	\$ 800.00	\$ 0	[\$ 0]
[Renewal] Nonrefundable Annual Information Update Fee [– <i>Nonrefundable</i>]	\$ 500.00	[\$ 500.00]	\$ 400.00	\$200.00	[\$ 200.00]

(b) If an applicant applies for more than one license, the applicant shall submit the application fees for both licenses. For example, the application fee for both an electric power supplier license and a [clean power marketer license would be \$ 2,500; and the fee for both an electric power supplier license and a] gas supplier license would be [\$ 2,050] **\$2,300**. Similarly, an applicant that applies for more than one license shall post a surety bond for the sum of the applicable amounts required at N.J.A.C. 14:4-5.4(f). **For registrants, the application fee remains the same if an applicant applies for one, two, or all three registrations. For example, an initial fee for an Energy Agent would be \$500 and the initial fee for an Energy Agent and Energy Consultant would be \$500 as well.**

14:4-5.13 Enforcement

(a)-(c) (No change.)

(d) Nothing shall limit the authority of the Board to deny, suspend, or revoke a license or

registration at any time, consistent with the provision (P.L. 1999, c. 23 (N.J.S.A 48:3-49 et seq.).